

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 18

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte MARK ALLAIN and JOSEPH ALLAIN, JR.

Appeal No. 2001-0180
Application No. 08/887,421

ON BRIEF

Before ABRAMS, McQUADE, and NASE, Administrative Patent Judges.

McQUADE, Administrative Patent Judge.

DECISION ON APPEAL

Mark Allain et al. originally took this appeal from the final rejection of claims 1 through 8 and 17. As the examiner has since withdrawn the rejections of claims 3 and 7, which now stand objected to as depending from rejected claims, the appeal as to claims 3 and 7 is hereby dismissed, leaving for review the standing rejections of claims 1, 2, 4 through 6, 8 and 17. Claim 11 stands allowed and claims 13 through 16 and 18 through 20, the only other claims pending in the

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application, stand withdrawn from consideration pursuant to 37
CFR § 1.142(b).

THE INVENTION

The subject matter on appeal relates to a vehicle flood
rescue raft. Claim 17 is representative and reads as follows:

17. A vehicle flood rescue raft (VFRR) comprising in
combination:

flexible means forming at least one hermetically sealed
air chamber, said at least one hermetically sealed air chamber
having front and rear ends [and] a capacity sufficient to
float a vehicle carried thereby in flood waters,

valve means for filling said at least one hermetically
sealed air chamber with air such that in non-flood water
condition, the means forming at least one hermetically sealed
air chamber engages a vehicle positioned thereover and the
ground and in flood water conditions said vehicle is floated
on said raft and grommet means at said front and rear ends for
positioning said raft under a vehicle and/or tethering the
front and rear ends of said raft to a stationary object in
flood waters.

THE PRIOR ART

The items relied on by the examiner as evidence of
obviousness are:

Curcio

3,011,184

Dec. 5, 1961

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Official Notice taken by the examiner "of the old and conventional practice in the art of rafts of using any of a variety of art recognized equivalent fastening or tethering mechanisms for holding the raft in place, such as for example grommets for receiving straps or ropes to secure the raft" (Examiner's Answer, Paper No. 15, page 5)

THE REJECTION

Claims 1, 2, 4 through 6, 8 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Curcio in view of the Official Notice taken by the examiner.

Attention is directed to the appellants' main and reply briefs (Paper Nos. 14 and 16) and to the examiner's answer (Paper No. 15) for the respective positions of the appellants and the examiner with regard to the merits of this rejection.¹

DISCUSSION

I. Grouping of claims

On page 3 in the main brief, the appellants state that "[t]he claims stand or fall together." Therefore, pursuant to

¹ In the final rejection (Paper No. 10), claims 1 through 8 and 17 stood rejected under 35 U.S.C. 112, second paragraph, as being indefinite. The examiner has since withdrawn this rejection upon reconsideration (see page 2 in the answer).

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37 CFR § 1.192(c)(7) we have selected representative claim 17 and shall decide the appeal on the basis of this claim alone. Hence, claims 1, 2, 4 through 6 and 8 stand or fall with claim 17.

II. The merits of the rejection

Curcio discloses "an inflatable raft upon which a motor vehicle can be driven when the raft is in a collapsed condition, the raft being then inflatable to support the motor vehicle on the surface of a body of water" (column 1, lines 20 through 24). The reference describes the embodiment shown in Figures 1 through 6 in the following words:

there is shown a raft 20 formed by a casing made of an inflatable gas-tight hermetically sealed material such as rubber, plastic, or the like. The raft includes an outer ring 24 enclosing a generally rectangular well 22. The raft has a forward narrower end 26 and a wide curved rear end 28. The well 22 is further defined by a floor or platform 30. This floor is hollow as clearly shown in FIGS. 4-6 and is integral with the casing wall 24. Two wide rectangular openings 32 are provided at the corners of the forward end of the floor and two narrower openings 34 are provided near the corners of the rear end of the floor. The rear openings have obliquely disposed lower walls 36 and 38 as best shown in FIG. 5. The forward openings have obliquely disposed lower walls 40 and 42. A valve 44 is provided on the flat top of casing wall 24 by means of which air, carbon dioxide or other gas can be passed under pressure into the raft for inflating it. Straps 46 and buckles or loops 48 are secured

to the top of the raft on opposite sides thereof. The straps can be extended over a motor vehicle such as an automobile, as shown in FIG. 1, to secure the vehicle in the raft.

In operation of the raft, it will be initially deflated so that the vehicle can be run up on the raft. The front wheels of the vehicle will be positioned in the forward openings 32 and the rear wheels will be positioned in the rear openings 34. The raft may then be inflated through valve 44 until the bottom of the vehicle is fully supported on the inflated floor 30 and the wheels are suspended in the openings with the lowermost points of the wheels located just below the bottoms of the constricted straight portions 50, 52 of the openings where they begin to flare outwardly to form the obliquely disposed lower walls 36, 38 and 40, 42. The rear wheels of the vehicle will turn when the motor of the vehicle is run so that the raft is propelled in the water. The front wheels, which are disposed in the larger openings and frictionally engage the water, can be turned laterally to steer the raft by traction. They have the same effect as a pair of forwardly located parallel rudders. If the vehicle has all four wheels driven by the engine, a more rapid propelling action in the water will be had, with the front wheels still turnable to steer the raft. The straps 46 will be tied to the loops 48 after the vehicle V is fully positioned in the compartment 22 and the raft fully inflated [column 1, line 65, through column 2, line 38].

It is not disputed that Curcio responds to all of the limitations in claim 17 except for the one requiring "grommet means at said front and rear ends for positioning said raft under a vehicle and/or tethering the front and rear ends of said raft to a stationary object in flood waters."

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As indicated above, the examiner has taken official notice of the old and conventional practice of providing rafts with grommets to fasten or tether them in place. This notice is reasonable on its face, and to the extent it has been challenged by the appellants in the main brief (see page 5), the examiner has cited three supporting prior art references in the answer (see the paragraph bridging pages 6 and 7). Inasmuch as the appellants have not contested the legitimacy of this supporting evidence in their reply brief, we accept the officially notice facts at face value.

In proposing to combine Curcio and the officially noticed practice of providing rafts with grommets, the examiner concludes (see pages 4 and 5 in the answer) that it would have been obvious to one of ordinary skill in the art to add grommets to the front and rear ends of the Curcio raft to permit it to be anchored or tethered it to a stationary object.

The appellants traverse this conclusion (see pages 4 through 7 in the main brief and pages 1 and 2 in the reply brief), arguing that the applied prior art would not have

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suggested the stated use or function of the recited grommet means to position the raft under a vehicle and/or tether the front and rear ends of the raft to a stationary object in flood waters.

A conclusion of obviousness may be based on common knowledge and common sense of the person of ordinary skill in the art without any specific hint or suggestion in a particular reference. In re Bozek, 416 F.2d 1385, 1390, 163 USPQ 545, 549 (CCPA 1969). In the present case, the examiner's conclusion that it would have been obvious to add grommets to the front and rear ends of the Curcio raft to permit it to be anchored or tethered to a stationary object is reasonable as a simple matter of common sense in view of the officially noticed old and conventional practice of providing rafts with tethering grommets. Although the appellants are correct in pointing out that the examiner's rationale does not address the functional recitations in claim 17 that the grommet means are "for positioning said raft under a vehicle and/or tethering the front and rear ends of said raft to a stationary object in flood waters," the law does not require that references be combined for the reasons contemplated by

the inventor as long as some motivation or suggestion to combine them is provided by the prior art taken as a whole. In re Beattie, 974 F.2d 1309, 1312, 24 USPQ2d 1040, 1042 (Fed. Cir. 1992). Curcio and the officially noticed facts provide the requisite motivation or suggestion. The functional recitations associated with the grommet means in claim 17 are merely statements of intended use.² It is not apparent, nor has the appellant cogently explained or established, why grommets added to the front and rear ends of the Curcio raft would not be inherently capable of such use. In this regard, claim 17 is directed to the structure of a vehicle flood rescue raft, not a method of using such structure. As so modified, the Curcio raft responds fully to the raft structure set forth in the claim.

Accordingly, we shall sustain the standing 35 U.S.C.

§ 103(a) rejection of claim 17, and claims 1, 2, 4 through 6 and 8 which stand or fall therewith, as being unpatentable

² The definition of the "means" limitation at issue in terms of the structural modifier "grommet" forestalls any argument that the limitation is a means-plus-function recitation which must be construed under 35 U.S.C. § 112, sixth paragraph.

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over Curcio in view of the Official Notice taken by the
examiner.

SUMMARY

The decision of the examiner to reject claims 1, 2, 4
through 6, 8 and 17 is affirmed.

No period for taking any subsequent action in connection
with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED

NEAL E. ABRAMS)	
Administrative Patent Judge)	
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)	
)	
)	BOARD OF PATENT
JOHN P. McQUADE)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
)	
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JEFFREY V. NASE)	
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APJ NASE

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AFFIRMED

September 13, 2002